

\_\_\_\_\_ of \_\_\_\_\_

(b) Any entity:

Date \_\_\_\_\_

a. That is controlled, directly or indirectly, by a trust or otherwise by, or for the benefit of, shareholders who beneficially, or otherwise, control, directly or indirectly, by trust or otherwise, the licensee or any company that controls the licensee; or

b. A majority of the directors or trustees of which constitute a majority of the persons holding any such office with the licensee or any company that controls the licensee;

(c) Any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the licensee or any subsidiary or affiliate of the licensee;

(3) "Annual audit", a certified audit of the licensee's books and records and systems of internal control performed by a certified public accountant in accordance with generally accepted accounting principles and generally accepted auditing standards;

(4) "Board", the residential mortgage board, created in section 443.816;

(5) "Borrower", the person or persons who use the services of a [loan] mortgage broker, originator or lender;

(6) "Continuing education" or "certified course of continuing education", a course or study consisting of sixteen hours of classroom education every two years relating to loan originating which is approved by the board;

(7) "Director", the director of the division of finance

within the department of economic development;

[(7)] (8) "Escrow agent", a third party, individual or entity, charged with the fiduciary obligation for holding escrow funds on a residential mortgage loan pending final payout of those funds in accordance with the terms of the residential mortgage loan;

[(8)] (9) "Exempt entity", the following entities:

(a) Any bank or trust company organized under the laws of this or any other state or any national bank or any foreign banking corporation licensed by the division of finance or the United States Comptroller of the Currency to transact business in this state;

(b) Any state or federal savings and loan association, savings bank or credit union or any consumer finance company licensed under sections 367.100 to 367.215, RSMo, which is actively engaged in consumer credit lending;

(c) Any insurance company or licensed insurance agent, broker, or producer authorized to transact business in this or any other state;

(d) Any person engaged solely in commercial mortgage lending or any person making or acquiring residential or commercial construction loans with the person's own funds for the person's own investment;

(e) Any service corporation of a federally chartered or

state-chartered savings and loan association, savings bank or credit union;

(f) Any first-tier subsidiary of a national or state bank that has its principal place of business in this state, provided that such first-tier subsidiary is regularly examined by the division of finance or the Comptroller of the Currency or a consumer compliance examination of it is regularly conducted by the Federal Reserve;

(g) Any person engaged solely in the business of securing loans on the secondary market provided such person does not make decisions about the extension of credit to the borrower;

(h) Any mortgage banker as defined in subdivision [(19)] (21) of this subsection; or

(i) Any wholesale mortgage lender who purchases mortgage loans originated by a licensee provided such wholesale lender does not make decisions about the extension of credit to the borrower;

(j) Any person making or acquiring residential mortgage loans with the person's own funds for the person's own investment;

(k) [Any person employed or contracted by a licensee to assist in the performance of the activities regulated by sections 443.800 to 443.893 who is compensated in any manner by only one licensee;

(1)] Any person licensed pursuant to the real estate agents and brokers licensing law, chapter 339, RSMo, who engages in servicing or the taking of applications and credit and appraisal information to forward to a licensee or an exempt entity for transactions in which the licensee is acting as a real estate broker and who is compensated by either a licensee or an exempt entity;

[(m)] (1) Any person who originates, services or brokers residential mortgagee loans and who receives no compensation for those activities, subject to the director's regulations regarding the nature and amount of compensation;

(m) Any person who performs the activities of a loan originator and who is employed by or under exclusive contract with a licensee that has a net worth on file with the director that exceeds twenty-five million dollars and who only offers loan products of affiliated lenders that are wholly owned by the same publicly traded company as the licensee;

[(9)] (10) "Financial institution", a savings and loan association, savings bank, credit union, mortgage banker or bank organized under the laws of Missouri or the laws of the United States with its principal place of business in Missouri;

[(10)] (11) "First-tier subsidiary", as defined by administrative rule promulgated by the director;

[(11)] (12) "Full-service office", office and staff in

Missouri reasonably adequate to handle efficiently communications, questions and other matters relating to any application for a new, or existing, home mortgage loan which the licensee is brokering, funding, originating, purchasing or servicing. The management and operation of each full-service office must include observance of good business practices such as adequate, organized and accurate books and records, ample phone lines, hours of business, staff training and supervision and provision for a mechanism to resolve consumer inquiries, complaints and problems. The director shall promulgate regulations with regard to the requirements of this subdivision and shall include an evaluation of compliance with this subdivision in the periodic examination of the licensee;

[(12)] (13) "Government-insured mortgage loan", any mortgage loan made on the security of residential real estate insured by the Department of Housing and Urban Development or Farmers Home Loan Administration, or guaranteed by the Veterans Administration;

[(13)] (14) "Lender", any person who either lends money for or invests money in residential mortgage loans;

[(14)] (15) "Licensee" [or "residential mortgage licensee"], a person who is licensed to engage in [the] mortgage brokering or loan originating activities as defined in and regulated by sections 443.800 to 443.893;

~~[(15)]~~ (16) "Loan broker" or "broker", a person exempted from licensing pursuant to subdivision (8) of this subsection, who performs the activities described in subdivisions ~~[(17)]~~ (19) and ~~[(32)]~~ (36) of this subsection;

~~[(16)]~~ (17) "Loan originator", a person who, for compensation or gain, solicits or receives a mortgage application, assembles information and prepares paperwork and documentation necessary for obtaining a residential mortgage loan, or arranges for a conditional mortgage loan commitment between a borrower and a lender, or arranges for a residential loan commitment from a lender, or solicits financial and mortgage information from the public for sale to another residential mortgage broker, but does not include a person who does not deal directly with borrowers, negotiate interest rates, advise on loan programs, offer loan locks or loan commitments, or individuals who complete incidental services in arranging or procuring a mortgage loan, including administrative staff whose primary function is the verification of data provided by the borrower, assembly of documents, and coordination of third party services such as ordering an appraisal, title report, or credit report;

(18) "Loan brokerage agreement", a written agreement in which a broker agrees to do either of the following:

(a) Obtain a residential mortgage loan for the borrower or assist the borrower in obtaining a residential mortgage loan; or

(b) Consider making a residential mortgage loan to the borrower;

[(17)] (19) "Loan brokering", "mortgage brokering", or "mortgage brokerage service", the act of helping to obtain for an investor or from an investor for a borrower, a loan secured by residential real estate situated in Missouri or assisting an investor or a borrower in obtaining a loan secured by residential real estate in return for consideration;

[(18)] (20) "Making a residential mortgage loan" or "funding a residential mortgage loan", for compensation or gain, either, directly or indirectly, advancing funds or making a commitment to an applicant for a residential mortgage loan;

[(19)] (21) "Mortgage banker", a mortgage loan company which is subject to licensing, supervision, or annual audit requirements by the Federal National Mortgage Association (FNMA), or the Federal Home Loan Mortgage Corporation (FHLMC), or the United States Veterans Administration (VA), or the United States Department of Housing and Urban Development (HUD), or a successor of any of the foregoing agencies or entities, as an approved lender, loan correspondent, seller, or servicer;

[(20)] (22) "Mortgage broker" or "broker", a person licensed pursuant to this chapter who performs mortgage brokering and servicing;

(23) "Mortgage loan" or "residential mortgage loan", a loan



to, or for the benefit of, any natural person made primarily for personal, family or household use, including a reverse mortgage loan, primarily secured by either a mortgage or reverse mortgage on residential real property or certificates of stock or other evidence of ownership interests in, and proprietary leases from, corporations or partnerships formed for the purpose of cooperative ownership of residential real property;

[(21)] (24) "Net worth", as provided in section 443.859;

[(22)] (25) "Originate" or "originating", [the advertising, soliciting, taking applications, processing, closing, or issuing of commitments for, and funding of, residential mortgage loans] those activities associated with a loan originator;

[(23)] (26) "Party to a residential mortgage financing transaction", a borrower, lender or loan broker in a residential mortgage financing transaction;

[(24)] (27) "Payments", payment of all, or any part of, the following: principal, interest and escrow reserves for taxes, insurance and other related reserves and reimbursement for lender advances;

[(25)] (28) "Person", any individual, firm, partnership, corporation, company or association and the legal successors thereof;

[(26)] (29) "Personal residence address", a street address, but shall not include a post office box number;

[(27)] (30) "Purchasing", the purchase of conventional or government-insured mortgage loans secured by residential real estate from either the lender or from the secondary market;

[(28)] (31) "Residential loan originator license certification course", a course of study consisting of sixteen hours of education followed by a one-hundred question examination relating to loan originating which is approved by the board;

(32) "Residential mortgage board", the residential mortgage board created in section 443.816;

[(29)] (33) "Residential mortgage financing transaction", the negotiation, acquisition, sale or arrangement for, or the offer to negotiate, acquire, sell or arrange for, a residential mortgage loan or residential mortgage loan commitment;

[(30)] (34) "Residential mortgage loan commitment", a written conditional agreement to finance a residential mortgage loan;

[(31)] (35) "Residential real property" or "residential real estate", real property located in this state improved by a one-family to four-family dwelling;

[(32)] (36) "Servicing", the collection or remittance for, or the right or obligation to collect or remit for, any lender, noteowner, noteholder or for a licensee's own account, of payments, interests, principal and trust items such as hazard insurance and taxes on a residential mortgage loan and includes

loan payment follow-up, delinquency loan follow-up, loan analysis and any notifications to the borrower that are necessary to enable the borrower to keep the loan current and in good standing;

[(33)] (37) "Soliciting, processing, placing or negotiating a residential mortgage loan", for compensation or gain, either, directly or indirectly, accepting or offering to accept an application for a residential mortgage loan, assisting or offering to assist in the processing of an application for a residential mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with a lender on behalf of a borrower including, but not limited to, the submission of credit packages for the approval of lenders, the preparation of residential mortgage loan closing documents, and including a closing in the name of a broker;

[(34)] (38) "Ultimate equitable owner", a person who, directly or indirectly, owns or controls an ownership interest in a corporation, foreign corporation, alien business organization, trust or any other form of business organization regardless of whether the person owns or controls the ownership interest through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies or other entities or devices, or

any combination thereof.

2. The director may define by rule any terms used in sections 443.800 to 443.893 for efficient and clear administration. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

443.805. 1. No person shall engage in the business of brokering, funding, originating, servicing or purchasing of residential mortgage loans without first obtaining [a] the applicable mortgage broker or loan originator license from the director, pursuant to sections 443.800 to 443.893 and the regulations promulgated thereunder. The licensing provisions [of sections 443.805 to 443.812] shall not apply to any exempt entity [engaged solely in commercial mortgage lending or to any person exempt as provided in section 443.803 or pursuant to regulations

promulgated as provided in sections 443.800 to 443.893], as defined in subdivision (9) of subsection 1 of section 443.803, or employees of such exempt entity.

2. No person except a licensee or exempt entity shall do any business under any name or title or circulate or use any advertising or make any representation or give any information to any person which indicates or reasonably implies activity within the scope of the provisions of sections 443.800 to 443.893.

3. The provisions of this section shall not apply to mortgage brokers or loan originators who were registered, licensed, or otherwise employed to originate loans prior to August 28, 2004. On and after such date, such individuals shall have until August 28, 2005, or their next license renewal date, whichever is earlier, to meet all loan originator licensing requirements as provided in sections 443.800 to 443.893.

443.821. The director shall issue a license upon completion of the following:

(1) The filing of [an] a mortgage broker application or loan originator application, both of which shall include evidence of the satisfactory completion of the residential loan originator license certification course and examination;

(2) The filing with the director of a listing of judgments entered against, and bankruptcy petitions by, the applicant for the preceding seven years;

(3) The payment of investigation and application fees to be established by administrative rule; and

(4) An investigation of the averments required by subdivisions (1) to (21) of section 443.827[, which] for a mortgage broker applicant and subdivisions (8) to (21) of section 443.827 for a loan originator applicant. The investigation must allow the director to issue positive findings stating that the financial responsibility, experience, character and general fitness of the applicant, and of the members thereof, if the applicant is a partnership or association, and of the officers and directors thereof if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently within the scope of sections 443.800 to 443.893. If the director does not find the applicant's business and personal conduct warrants the issuance of a license, the director shall notify the applicant of the denial with the reasons stated for such denial. An applicant may appeal such denial to the board.

443.823. 1. All licenses shall be issued in duplicate with one copy being transmitted to the license applicant and the second being retained with the director. Upon receipt of such license, a [residential mortgage] licensee may engage in a business regulated by sections 443.800 to 443.893. Such license shall remain in full force and effect until it expires without

renewal, is surrendered by the licensee or is revoked or suspended as provided in sections 443.800 to 443.893.

2. Upon receipt of a loan originator license, the licensee shall immediately deliver the license to his or her current employer. Upon termination of employment the license shall be transferred to a new employer and the director shall be notified. If the loan originator does not have a new employer, the license shall be returned to the director with a written explanation or the reasons for termination. The license may be returned to the licensee as determined by the director.

443.827. Each broker application shall be accompanied by an averment of subdivisions (1) to (21) of the following, and each loan originator application shall be accompanied by an averment of subdivisions (8) to (21) of the following, that the applicant:

(1) Will maintain at least one full-service office within the state of Missouri as provided in section 443.857;

(2) Will maintain staff reasonably adequate to meet the requirements of section 443.857;

(3) Will keep and maintain for thirty-six months the same written records as required by the federal Equal Credit Opportunity Act, 15 U.S.C. 1691, et seq., and any other information required by rules of the director;

(4) Will timely file any report required pursuant to sections 443.800 to 443.893;

(5) Will not engage, whether as principal or agent, in the practice of rejecting residential mortgage applications or varying terms or application procedures without reasonable cause, on real estate within any specific geographic area from the terms or procedures generally provided by the licensee within other geographic areas of the state;

(6) Will not engage in fraudulent home mortgage underwriting practices;

(7) Will not make payments, whether directly or indirectly, of any kind to any in-house or fee appraiser of any government or private money lending agency with which an application for a home mortgage has been filed for the purpose of influencing the independent judgment of the appraiser with respect to the value of any real estate which is to be covered by such home mortgage;

(8) Has filed tax returns, both state and federal, for the past three years or filed with the director a personal, an accountant's or attorney's statement as to why no return was filed;

(9) Will not engage in any activities prohibited by section 443.863;

(10) Will not knowingly misrepresent, circumvent or conceal any material particulars regarding a transaction to which the applicant is a party;

(11) Will disburse funds in accordance with the applicant's



agreements through a licensed and bonded disbursing agent or licensed real estate broker;

(12) Has not committed any crime against the laws of this state, or any other state or of the United States, involving moral turpitude, fraudulent or dishonest dealings and that no final judgment has been entered against the applicant in a civil action upon grounds of fraud, misrepresentation or deceit which has not been previously reported to the director;

(13) Will account for and deliver to any person any personal property, including, but not limited to, money, funds, deposits, checks, drafts, mortgages or any other thing of value, which has come into the applicant's possession and which is not the applicant's property or which the applicant is not in law or equity entitled to retain under the circumstances, at the time which has been agreed upon or is required by law, or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery;

(14) Has not engaged in any conduct which would be cause for denial of a license;

(15) Has not become insolvent;

(16) Has not submitted an application which contains a material misstatement;

(17) Has not demonstrated negligence or incompetence in the performance of any activity required to hold a license under

sections 443.800 to 443.893;

(18) Will advise the director in writing of any changes to the information submitted on the most recent application for license within forty-five days of such change. The written notice must be signed in the same form as the application for the license being amended;

(19) Will comply with the provisions of sections 443.800 to 443.893, or with any lawful order or rule made thereunder;

(20) When probable cause exists, will submit to periodic examinations by the director as required by sections 443.800 to 443.893; and

(21) Will advise the director in writing of any judgments entered against, and bankruptcy petitions by, the license applicant within five days of the occurrence of the judgment or petition.

443.833. 1. Licenses shall be renewed on the first anniversary of the date of issuance and every two years thereafter. Renewal application forms and fees shall be submitted to the director at least sixty days before the renewal date. A renewal application shall include evidence of the satisfactory completion of sixteen hours of continuing education.

2. The director shall send notice at least ninety days before the licensee's renewal date, but failure to send or receive such notice is no defense for failure to timely renew,

except when an extension for good cause is granted by the director. If the director does not grant an extension and the licensee fails to submit a completed renewal application form and the proper fees in a timely manner, the director may assess additional fees as follows:

(1) A fee of five hundred dollars shall be assessed the licensee thirty days after the proper renewal date, and one thousand dollars each month thereafter, until the license is either renewed or expires pursuant to subsections 3 and 4 of this section;

(2) Such fee shall be assessed without prior notice to the licensee, but shall be assessed only in cases where the director possesses documentation of the licensee's continuing activity for which the unrenewed license was issued.

3. A license which is not renewed by the date required in this section shall automatically become inactive. No activity regulated by sections 443.800 to 443.893 shall be conducted by the licensee when a license becomes inactive. An inactive license may be reactivated by filing a completed reactivation application with the director, payment of the renewal fee, and payment of a reactivation fee equal to the renewal fee.

4. A license which is not renewed within one year of becoming inactive shall expire.

443.839. 1. A mortgage broker licensee may apply for

authority to open and maintain additional offices by:

(1) Giving the director prior notice of the licensee's intention in such form as prescribed by the director;

(2) Paying a fee to be established by the director by administrative rule.

2. Upon receipt of the notice and fee required by subsection 1 of this section, the director shall issue a certificate for the additional office. The certificate shall be conspicuously displayed in the respective additional office.

443.849. A corporate surety bond in the principal sum of twenty thousand dollars shall accompany each application for a mortgage broker license. The bond shall be in a form satisfactory to the director and shall be issued by a bonding company or insurance company authorized to do business in this state, to secure the faithful performance of the obligations of the applicant and the agents and subagents of the applicant in connection with the activities of originating, servicing or acquiring mortgage loans. An applicant or licensee may, in lieu of filing the bond required pursuant to this section, provide the director with a twenty thousand dollar irrevocable letter of credit, as defined in section 400.5-103, RSMo, issued by any financial institution.

443.851. 1. At the end of the mortgage broker licensee's fiscal year, but in no case more than twelve months after the

last audit conducted pursuant to this section and section 443.853, each mortgage broker licensee shall cause the mortgage broker licensee's books and accounts to be audited by a certified public accountant not connected with such mortgage broker licensee. The books and records of all mortgage broker licensees shall be maintained on an accrual basis. The audit shall be sufficiently comprehensive in scope to permit the expression of an opinion on the financial statements in the report and must be performed in accordance with generally accepted accounting principles and generally accepted auditing standards.

2. As used in this section and section 443.853, the term "expression of opinion" includes either:

- (1) An unqualified opinion;
- (2) A qualified opinion;
- (3) A disclaimer of opinion; or
- (4) An adverse opinion.

3. If a qualified or adverse opinion is expressed or if an opinion is disclaimed, the reasons therefor shall be fully explained. An opinion, qualified as to a scope limitation, shall not be acceptable.

4. The audit report shall be filed with the director within one hundred twenty days of the audit date. The report filed with the director shall be certified by the certified public accountant conducting the audit. The director may promulgate

rules regarding late audit reports.

5. As an alternative to the audit requirements of subsections 1 to 4 of this section, a mortgage broker licensee may meet the requirements of this section without filing an audit report by posting and maintaining a corporate surety bond, in addition to that described in section 443.849, in the amount of one hundred thousand dollars. The bond shall be in form specified by and satisfactory to the director and payable to the director and shall be issued by a bonding company or insurance company authorized to do business in this state, to secure the faithful performance of the obligations of the mortgage broker licensee, its agents and subagents in connection with the activities of originating, servicing or acquiring mortgage loans. A mortgage broker licensee may, in lieu of this bond, provide the director with a one hundred thousand dollar irrevocable letter of credit, as defined in section 400.5- 103, RSMo, issued by any financial institution.

443.855. In addition to such other rules the director may promulgate to effectuate sections 443.800 to 443.893, the director shall prescribe rules governing the advertising of mortgage loans, including, without limitation, the following requirements:

(1) Advertising for loans transacted pursuant to the requirements of sections 443.800 to 443.893 may not be false,

misleading or deceptive. No person whose activities are regulated pursuant to the provisions of sections 443.800 to 443.893 may advertise in any manner so as to indicate or imply that the person's interest rates or charges for loans are in any way recommended, approved, set or established by the state or by the provisions of sections 443.800 to 443.893;

(2) All advertisements by a mortgage broker licensee shall contain the name and an office address of such entity, which shall conform to a name and address on record with the director.

443.857. Each mortgage broker licensee shall maintain, in the state of Missouri, at least one full-service office with staff reasonably adequate to efficiently handle all matters relating to any proposed or existing home mortgage with respect to which such licensee is performing services.

443.859. Effective [May 21, 1998] January 1, 2005, every mortgage broker licensee shall have and maintain a net worth of not less than [twenty-five] fifty thousand dollars. The director may promulgate rules with respect to net worth definitions and requirements for mortgage broker licensees as necessary to accomplish the purposes of sections 443.800 to 443.893. [In lieu of the net worth requirement established by this section, the director may accept evidence of conformance by the licensee with the net worth requirements of the United States Department of Housing and Urban Development.]

443.885. On or before March first of each year, each mortgage broker licensee, except those exempt entities provided for in subsection 8 of section 443.803, shall file a report with the director which shall disclose the following information with respect to the immediately preceding calendar year:

(1) A list of home mortgages granted, issued, originated or closed during the report period, with respect to which such licensee has had any connection. The list shall show for each census tract, in regions where such census tracts have been established and by zip code in all other regions, the number and aggregate dollar amount of applications for and the number granted and aggregate dollar amount of:

(a) Conventional mortgage loans;

(b) Mortgage loans insured under the National Housing Act, 12 U.S.C. 1701, et seq.; and

(c) Mortgage loans guaranteed under the provisions of the Federal Veterans' Benefits Act, 38 U.S.C. 3710 et seq.;

(2) List by zip code in those areas having no census tract:

(a) The total number of home mortgages on real estate situated in this state with respect to which the licensee has had any connection and which are in default on the last day of the reporting period; and

(b) The total number of claims paid during the reporting period on home mortgages with respect to which the licensee has



had any connection, including the date of the first default thereon and the date each such foreclosure proceeding was instituted;

(3) If the director finds that another report that the licensee is required to compile is equivalent to the annual report of mortgage activity, then the director may accept such report as fulfilling the reporting requirements of this section;

(4) The director may also require by rule that licensees report such additional information as is necessary to assure strict compliance with the provisions of sections 443.800 to 443.893."; and

Further amend said title, enacting clause and intersectional references accordingly.